

A Chia Yan Tek & Anor v Ng Swee Kiat & Anor

FEDERAL COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02-03 OF 1998(B)

MOHAMED DZAIDDIN CHIEF JUSTICE, STEVE SHIM CJ (SABAH & SARAWAK) AND HAIDAR FCJ

B 10 AUGUST 2001

Civil Procedure — Judge — Retirement — Whether court duly constituted — Whether judgment pronounced after retirement of two out of three presiding judges a nullity — Effective date of judgment — Rules of the Federal Court 1995 rr 63 & 137 — Courts of Judicature Act 1964 s 78(1)

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This was an application by the respondents to set aside the judgment of this court pronounced by the deputy registrar on 22 December 2000 on the ground that it was a nullity. By a civil suit filed by the appellants who were the plaintiffs, the respondents were sued, inter alia, for a declaration that the transfer of 100 shares of Peringkat Juta (M) Sdn Bhd ('the company') by the plaintiffs to the respondents was null and void by reason of fraudulent misrepresentation. At the conclusion of the trial, the plaintiffs' claim was dismissed with costs.

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On appeal, the Court of Appeal dismissed the appeal. The appellants then filed an application to the Federal Court for leave to appeal. Leave was granted and the appeal came up for disposal on 3 August 1998 before Eusoff Chin Chief Justice, Wan Adnan CJ (Malaya) and Zakaria Yatim FCJ. Judgment was reserved and pronounced on 22 December 2000, allowing the appeal with costs. It was the respondents' case that the judgment of the court was a nullity because

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when the judgment was pronounced on 22 December 2000 there was only one judge remaining who was capable of exercising his functions

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as a judge of that court, the other two having retired as judges before 22 December 2000. The respondents, relying on r 63 of the Rules of the Federal Court 1995 ('the Rules'), submitted that the effective date of the judgment is when it is pronounced in open court. The

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appellant, in relying on s 78(1) of the Courts of Judicature Act 1964, submitted that a judgment is effective on the date when it is given by the judge and not when pronounced in open court. The appellant also submitted that the Federal Court has no jurisdiction to reopen or rehear a case or review its own decision.

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Held, allowing the application to set aside the judgment:

(1) There is a clear distinction between the giving of judgment under s 78 of the Act and the pronouncement of the said judgment in r 63 of the Rules (see 8D). The section does not provide the manner in which and the time from when the judgment is to take effect. Rule 63 of the Rules seems to provide the answer. Clearly, r 63 provides the mode how a judgment is to be delivered, which is, by pronouncement in open court and under para (2) of r 63, it

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may be read by a judge of the court or by the registrar (see p 8E–F); *W’Field Fr Co v Steel Construction Co* [1968] NZLR 680 and *Surendra Singh & Ors v State of Uttar Pradesh* AIR 1954 SC 194 followed. Therefore the application of the appellants to set aside the judgment dated 22 December 2000 was allowed because on that date the court was not duly constituted as there was only one remaining judge of the court (see p 10C).

- (2) Rule 137 of the Rules clearly gives Federal Court the inherent powers to hear any application or to make any order as may be necessary to prevent injustice. The issue of reopening or reviewing the court’s own decision in the instant case therefore did not arise (see p 10B).

[Bahasa Malaysia summary]

Ini adalah satu permohonan oleh responden-responden untuk mengetepikan penghakiman mahkamah ini yang diumumkan oleh timbalan pendaftar pada 22 Disember 2000 atas alasan bahawa ia adalah satu pembatalan. Melalui satu guaman sivil yang difailkan oleh perayu-perayu yang merupakan plaintiff-plaintif, responden-responden telah disaman, antara lain, untuk satu deklarasi bahawa pemindahan 100 syer-syer Peringkat Juta (M) Sdn Bhd (‘syarikat tersebut’) oleh plaintiff-plaintif kepada responden-responden adalah batal dan tidak sah oleh sebab salah nyata fraud. Di penghujung perbicaraan, tuntutan plaintiff-plaintif telah ditolak dengan kos. Atas rayuan, Mahkamah Rayuan telah menolak rayuan tersebut. Perayu-perayu kemudiannya telah memfailkan kepada Mahkamah Persekutuan untuk kebenaran membuat rayuan. Kebenaran telah diberikan dan rayuan tersebut telah dikemukakan untuk penyelesaian pada 3 Ogos 1998 di hadapan Eusoff Chin Hakim Negara, Wan Adnan HB (Malaya) dan Zakaria Yatim HMP. Penghakiman telah ditangguhkan dan diumumkan pada 22 Disember 2000, membenarkan rayuan tersebut dengan kos. Adalah kes responden-responden bahawa penghakiman mahkamah adalah satu pembatalan kerana semasa penghakiman tersebut telah diumumkan pada 22 Disember 2000 terdapat hanya seorang hakim yang tinggal yang layak menggunakan fungsi-fungsi beliau sebagai seorang hakim di mahkamah tersebut, di mana dua hakim lain tersebut telah bersara sebagai hakim sebelum 22 Disember 2000. Responden-responden, dengan bergantung kepada k 63 Kaedah-Kaedah Mahkamah Persekutuan 1995 (‘kaedah tersebut’), menghujahkan bahawa tarikh kuat kuasa penghakiman tersebut adalah apabila ia diumumkan di mahkamah terbuka. Perayu, dengan bergantung kepada s 78(1) Akta Mahkamah Kehakiman 1964 (‘Akta tersebut’), menghujahkan bahawa satu penghakiman adalah berkuat kuasa pada tarikh ia disampaikan oleh hakim dan bukan apabila ia diumumkan di mahkamah terbuka. Perayu juga menghujahkan bahawa Mahkamah Persekutuan tidak mempunyai bidang kuasa untuk membuka semula

- A atau mendengar semula suatu kes atau mengkaji semula keputusannya sendiri.

Diputuskan, membenarkan permohonan untuk mengetepikan penghakiman tersebut:

- B (1) Wujud perbezaan yang jelas antara memberikan penghakiman di bawah s 78 Akta tersebut dan pengumuman penghakiman tersebut dalam k 63 kaedah tersebut (lihat ms 8D). Seksyen tersebut tidak memperuntukkan cara dan dari masa bila penghakiman tersebut sepatutnya mula berkuat kuasa. Kaedah 63 kaedah tersebut kelihatan seperti memperuntukkan satu jawapan.
- C Adalah jelas k 63 memperuntukkan cara bagaimana penghakiman sepatutnya disampaikan, iaitu, melalui pengumuman di mahkamah terbuka dan di bawah perenggan (2) k 63, ia boleh dibaca oleh seorang hakim mahkamah atau pendaftar (lihat ms 8E-F); *W'Field Fr Co v Steel Construction Co* (1968) NZLR 680 dan *Surendra Singh & Ors v State of Uttar Pradesh* AIR 1954 SC 194 diikuti. Maka permohonan perayu-perayu untuk mengetepikan penghakiman bertarikh 22 Disember 2000 adalah dibenarkan kerana pada tarikh tersebut mahkamah tidak dibentuk dengan betul memandangkan hanya terdapat seorang sahaja hakim mahkamah yang masih berfungsi (see ms 10C).
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- E (2) Kaedah 137 kaedah tersebut dengan jelas memberikan mahkamah kuasa sedia ada untuk mendengar apa-apa permohonan atau membuat apa-apa perintah yang mungkin difikirkan perlu untuk mengelakkan ketidakadilan. Persoalan membuka semula atau mengkaji semula keputusan sendiri di dalam kes sekarang ini oleh itu tidak timbul (lihat ms 10B).]
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Cases referred to

Bharat v R [1959] 3 All ER 292 (refd)

Muir v IRC [1966] 1 WLR 1269 (refd)

- G *Lye Thai Sang & Anor v Faber Merlin (M) Sdn Bhd & Ors* [1986] 1 MLJ 166 (refd)

Pacific Centre Sdn Bhd v United Engineers (M) Bhd [1984] 2 MLJ 143 (refd)

Ramachandran a/l Suppiah v PP [1992] 2 SLR 707 (refd)

- H *Surendra Singh & Ors v State of Uttar Pradesh* AIR 1954 SC 194 (folld)
W'Field Fr Co v Steel Construction Co [1968] NZLR 680 (folld)
Williams v Natural Life Foods [1998] 2 All ER 577 (refd)

Legislation referred to

- I Courts of Judicature Act 1964 s 78(1)
Federal Constitution art 128(3)
Rules of the Federal Court 1995 rr 63, 137

Appeal from: Civil Appeal No B-02-821 of 1995 (Court of Appeal, Kuala Lumpur) and Suit No 22-339 of 1993 (High Court, Shah Alam) A

CV Das (CK Tan and K Mohan with him) (CK Tan & Co) for the appellants.

Cecil Abraham (Rishwant Singh with him) (Lovelace & Hastings) for the respondents. B

Mohamed Dzaidin Chief Justice. (delivering judgment of the court): This was an application by the respondents to set aside the judgment of this court pronounced by the deputy registrar on 22 December 2000 on the ground that it was a nullity. C

Background

By a civil suit filed by the appellants in the High Court at Shah Alam, the appellants, who were the plaintiffs, sued the respondents, inter alia, for a declaration that the transfer of 100 shares of Peringkat Juta (M) Sdn Bhd ('the company') by the plaintiffs to the respondents was null and void by reason of fraudulent misrepresentation. At the conclusion of the trial, the learned judge dismissed the plaintiff's claim with costs. On appeal, the Court of Appeal dismissed the appeal and affirmed the decision of the High Court. The appellants then filed an application to the Federal Court for leave to appeal. On 20 February 1998, leave was granted and the appeal came up for disposal on 3 August 1998 before Eusoff Chin Chief Justice (as he then was), Wan Adnan CJ (Malaya) and Zakaria Yatim FCJ. After hearing counsel, judgment was reserved to a date to be fixed. D

On 19 December 2000, the parties' solicitors were informed by the deputy registrar of the Federal Court that judgment in respect of the above appeal would be pronounced in open court on Friday, 22 December 2000 at 9am. The material part of the letter (NSK-6) reads: E

Adalah dimaklumkan bahawa keputusan/penghakiman Mahkamah Persekutuan berkenaan dengan rayuan ini akan diumumkan di hadapan Mahkamah Persekutuan Malaysia di Kuala Lumpur pada hari Jumaat, 22 Disember 2000 jam 9 pagi. (Emphasis added.) G

On 22 December 2000, the deputy registrar pronounced the judgment of the Federal Court in the presence of counsel for the parties, allowing the appeal of the appellants with costs.

It was a short judgment, devoid of any reasoning, which reads as follows: H

Decision of the court

The Federal Court has agreed that this appeal be allowed with costs to be paid by the respondents in favour of the appellants here and in the courts below and further made the following consequential orders.

- (a) That the respondent do within 14 days of this order cause their company secretary to hand over the statutory books and documents of the company to the appellants. I

- A (b) That the respondent do forthwith execute the memorandum of transfer in respect of all the shares in the respondent's company in favour of the appellants and to hand the seal together with their respective share certificates to the appellants.
- (c) That the respondent and the company do pass the requisite resolutions and further do all acts, deeds or documents necessary to give effect to the aforesaid orders.
- B (d) That in the event of the respondents and/or the company secretary failing to carry out and fulfil any of the orders stated herein the SAR of the High Court is empowered to carry out such acts.

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Sgd
Mohd Eusoff Chin
19 December 2000
Sgd
Wan Adnan Ismail
19 December 2000

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On 29 December 2000, the appellants' solicitors submitted to the Federal Court Registry a draft copy of the order, the relevant part of which states as follows:

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Koram: Yang Amat Arif Tun Dato' Seri Haji Mohd Eusoff bin Chin,
Ketua Hakim Negara
Yang Amat Arif Dato' Wan Adnan bin Ismail,
Hakim Besar Malaya
Yang Arif Dato' Dr Zakaria bin Mohd Yatim, HMP

Pada Mahkamah Terbuka

Pada 22 Haribulan Disember 2000

Perintah

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Atas rayuan yang dikemukakan kepada mahkamah pada hari ini oleh Dr Cyrus Das (dengan En CK Tan dan En Mohandass bersamanya) peguam bagi pihak pemohon-pemohon dengan kehadiran En SS Muker, peguam bagi responden (dengan En Satvinder Singh bersamanya), dan setelah membaca rekod rayuan yang difailkan di sini, dan setelah mendengar peguam-peguam tersebut, adalah diperintahkan bahawa rayuan oleh perayu-perayu dibenarkan dengan kos di sini dan di Mahkamah Rayuan dan Mahkamah Tinggi, Shah Alam dan perintah-perintah berikutnya diberikan:

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(a) Responden dikehendaki dalam masa empat belas (14) hari dari tarikh perintah ini mengarahkan setiausaha syarikat untuk mengemukakan dan/atau menghantar-serah segala buku-buku statutori dan dokumen-dokumen syarikat Peringkat Juta (M) Sdn Bhd yang lain kepada perayu;

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(b) Responden secara segera dikehendaki menandatangani borang pindahmilik (Borang 32A) bagi semua saham-saham syarikat kepada perayu dan mengemukakan cop mohor bersama-sama dengan sijil-sijil saham kepada perayu.

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(c) Responden dan syarikat dikehendaki mengemukakan resolusi yang diperlukan dan membuat segala tindakan dan dokumen untuk menguatkuasakan perintah-perintah tersebut.

(d) Sekiranya responden dan/atau setiausaha syarikat gagal untuk melaksanakan dan menunaikan sebarang perintah-perintah tersebut,

Penolong Kanan Pendaftar Mahkamah Tinggi diberi kuasa untuk melaksanakan segala tindakan yang perlu. A

Diberi di bawah tandatangan saya dan meterai mahkamah pada 22 Disember 2000.

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Timbalan Pendaftar
Mahkamah Persekutuan Malaysia
Kuala Lumpur

Proceedings before the court

It was the respondents' case that the judgment of the court dated 19 December 2000 was a nullity because when the judgment was pronounced by the deputy registrar in open court on 22 December 2000, there was only one judge remaining who was capable of exercising his functions as a judge of that court, the other two having retired as judges before 22 December 2000. C

It is not disputed that Eusoff Chin Chief Justice (as he then was) and Wan Adnan CJ (Malaya) signed the decision of the court on 19 December 2000. However, when the judgment was pronounced on 22 December 2000, both Eusoff Chin Chief Justice (as he then was) and Zakaria Yatim FCJ had already retired. Therefore, when the decision was pronounced by the deputy registrar in open court on 22 December, the only remaining judge who formed the coram was Wan Adnan CJ (Malaya). D E

Mr Cecil Abraham, for the respondents, submitted that the effective date of the judgment is when it is pronounced in open court. He relied on r 63 of the Rules of the Federal Court 1995 ('the Rules') which states:

- (1) *The judgment of the court shall be pronounced in open court*, either on the hearing of the appeal or at any subsequent time, of which notice shall be given by the registrar to the parties to the appeal. F
- (2) Such judgment may be pronounced notwithstanding the absence of the judges who composed the court or any of them, and the judgment of any judge not present may be read by a judge of the court or by the registrar. (Emphasis added.) G

Mr Cecil Abraham relied heavily on *Surendra Singh & Ors v State of Uttar Pradesh* AIR 1954 SC 194, which was followed by the Singapore Court of Criminal Appeal in *Ramachandran a/l Suppiah v PP* [1992] 2 SLR 707.

In *Surendra Singh*, the question was whether the judgment could be validly delivered after the death of one of the two judges who heard the appeal. The Supreme Court of India held that a judgment is the final decision of the court intimated to the parties and to the world at large by formal 'pronouncement' or 'delivery' in open court. H

In *Ramachandran*, the applicants' appeals against conviction and sentence of death for murder were heard by the Court of Criminal Appeal on 13 April 1989. One of the judges who sat on the appellate bench during the hearing of the appeals then retired on 30 September 1989. The appeals I

A were dismissed some 21 months later in a reserved judgment dated 10 January 1991, which was also signed by the retired judge. The applicants applied by way of criminal motion for an order, inter alia, that the judgment dated 10 January 1991 be declared invalid and the convictions be set aside. The Court of Criminal Appeal ordered that the appeals be reheard before a new Court of Criminal Appeal and gave the following reasons:

B In Pt V of the Supreme Court of Judicature Act (Cap 322) ('the Act'), s 43 provides that for the purposes of 'hearing and determining' appeals under that part, the Court of Criminal Appeal 'shall be duly constituted if it consists of not less than three judges or any greater uneven number of judges'. Any other tribunal will not be a duly constituted Court of Criminal Appeal and so cannot have the powers and duties described in Pt V. The duty of such a duly constituted Court of Criminal Appeal is, inter alia, to hear and determine appeals in the manner prescribed in ss 54 and 55, and then '*to deliver judgment in open court*' (s 56(1)). Such judgment, then, may not be delivered by any other tribunal.

C We are of the view that though the Court of Criminal Appeal was duly constituted for the hearing of the appeal, the appellate tribunal which *delivered judgment* upon the applicants on 10 January 1991 was not a duly constituted Court of Criminal Appeal and was not competent to deliver that judgment pursuant to s 56(1) of the Act.

D Furthermore, it was not competent to determine the appeals, for that determination only occurred on the date of delivery of judgment. In *Surendra Singh & Ors v State of Uttar Pradesh*, Bose J said that *a judgment of the court was the expression of the court's opinion at the time of delivery*. Until the time of delivery, a judge is entitled to change his mind as to what is to be delivered. *Therefore, any judge who delivers a judgment or causes it to be delivered by a brother judge must be in existence as a proper member of the court at the moment of delivery.* (Emphasis added.)

E Dato' Dr Das, for the appellants, submitted that a judgment or decision is effective on the date when it is given by the judge and not when pronounced in open court. He relied on s 78(1) of the Courts of Judicature Act 1964 ('the Act') which states as follows:

F (1) If, in the course of any proceeding, or, in the case of a reserved judgment, at any time before delivery of the judgment, any judge of the court hearing the proceeding is unable, through illness or any other cause, to attend the proceeding or otherwise exercise his functions as a Judge of the court, the hearing of the proceeding shall ... continue before, and judgment or reserved judgment, as the case may be, shall be given by, the remaining judges of the court, not being less than two, and the court shall, for the purposes of the proceedings, be deemed to be duly constituted notwithstanding the absence or inability to act of the judge as aforesaid.

G According to him, the operative words of the section are 'shall be given', which means a judgment is given or delivered when it is signed by the remaining judges of the court. Counsel relied on *Bharat v R* [1959] 3 All ER 292; *Muir v IRC* [1966] 1 WLR 1269 at p 1287; *W'Field Fr Co v Steel Construction Co* [1968] NZLR 680. After considering these authorities, however, I form the view that they were not of much assistance to the court

because the ratios were founded on the particular rules and practice of the courts governing those cases and which even by analogy would not apply to the case before us. In *Williams v Natural Life Foods* [1998] 2 All ER 577 at p 581, Lord Steyn stated:

The sole purpose of the citation of the precedent is, or ought to be, the identification of a legal principle or rule which covers, or may arguably cover, the issue in the case to be decided.

Counsel further submitted that the court can only direct a rehearing under sub-s (2) which reads:

(2) In any such case as is mentioned in sub-s (1) the proceeding shall be determined in accordance with the opinion of the majority of the remaining Judges of the Court, and, if there is no majority the proceeding shall be reheard.

Dato' Das Dr also raised a point on jurisdiction, which I shall comment shortly.

The primary question for decision is the effective date of the judgment. Is it the date of giving the judgment or the pronouncement of the judgment in open court?

In my opinion, there is a clear distinction between the giving of judgment under s 78 of the Act and the pronouncement of the said judgment in r 63 of the Rules. Section 78 of the Act provides that the judgment or reserved judgment shall be given by the remaining judges of the court, not being less than two, and in which case, the court shall be deemed to be duly constituted. This begs the question: when is the judgment of the remaining judges given? The section does not provide the manner in which the time from when the judgment is to take effect. Rule 63 of the Rules seems to provide the answer. Clearly, r 63 of the Rules provides the mode how a judgment is to be delivered, which is, by pronouncement in open court, and under para (2) of r 63 of the Rules, it may be read by a judge of the court or by the registrar. It seems that this was also the practice of the House of Lords where the pronouncement is made in open court in a formal way (*W'Field Fr Co v Steel Construction Co* at p 686). It must not be forgotten that the Rules have statutory force and are not mere rules of practice. See *Pacific Centre Sdn Bhd v United Engineers (M) Bhd* [1984] 2 MLJ 143.

In addition to the above, I also adopt the reasonings in *Surendra Singh* which the Singapore Court of Criminal Appeal, in *Ramachandran*, agreed with its analysis in relation to Singapore criminal cases.

In *Surendra Singh*, the Supreme Court of India observed (at p 195):

Delivery of judgment is a solemn act which carries with it serious consequences for the person or persons involved. ... For that reason rules have been drawn up to determine the manner in which and the time from when the decision is to take effect and crystallize into an act which is thereafter final so far as the court delivering the judgment is concerned.

Further, at p 196, the court held as follows:

In our opinion, a judgment within the meaning of these sections is the final decision of the court intimated to the parties and to the world at large by

A formal 'pronouncement' or 'delivery' in open court. It is a judicial act which must be performed in a judicial way. Small irregularities in the manner of pronouncement or the mode of delivery do not matter but the substance of the thing must be there: that can neither be blurred nor left to inference and conjecture nor can it be vague. All the rest — the manner in which it is to be recorded, the way in which it is to be authenticated, the signing and the sealing, all the rules designed to secure certainty about its content and matter — can be cured; *but not the hard core, namely the formal intimation of the decision and its contents formally declared in a judicial way in open court.* The exact way in which this is done does not matter. In some courts, the judgment is delivered orally or read out, in some only the operative notice to the parties and laying the draft on the table for a given number of days for inspection.

C An important point therefore arises. It is evident that the decision which is so pronounced or intimated must be a declaration of the mind of the court as it is at the time of pronouncement. *We lay no stress on the mode or manner of delivery, as that is not of the essence, except to say that it must be done in a judicial way in open court.* But however it is done it must be an expression of the mind of the court at the time of delivery. We say this because that is the first judicial act touching the judgment which the court performs after the hearing.

D Everything else up till then is done out of court and is not intended to be the operative act which sets all the consequences which follow on the judgment in motion. Judges may, and often do, discuss the matter among themselves and reach a tentative conclusion. That is not their judgment. They may write and exchange drafts. Those are not the judgments either, however heavily and often they may have been signed. *The final operative act is that which is formally declared in open court with the intention of making it the operative decision of the court. That is what constitutes the 'judgment'.* (Emphasis added.)

For the reasons which I have given, I hold that the effective date of the judgment in the instant case is the date of pronouncement in open court, and not the date when it was signed by the remaining two judges of the court.

F Dato' Dr Das also submitted that the Federal Court has no jurisdiction to reopen or rehear a case or review its own decision. Counsel relied on art 128(3) of the Federal Constitution, which states that 'the jurisdiction of the Federal Court to determine appeals from the Court of Appeal, a High Court or a judge thereof shall be such as may be provided by federal law.'

G The Court of Judicature Act 1964 is such a law. He also referred to *Lye Thai Sang & Anor v Faber Merlin (M) Sdn Bhd & Ors* [1986] 1 MLJ 166, where Abdul Hamid CJ (Malaya), (as he then was) held as follows (at p 168):

H Where, therefore, a final decision has been delivered, an appeal is in effect heard and disposed of. In other words, it is brought to a final conclusion. And that being the case, the Supreme Court has no power to re-open, rehear and re-examine its decision for whatever purpose. The only exception where there can be a re-hearing is only to the extent provided by s 42, in particular sub-s (3) of s 42. The other exception is as provided under s 44 sub-s (3) to the effect that every order such as that envisaged in sub-s (1) of s 44 may be discharged or varied by the full court.

I Counsel further submitted that r 137 of the Rules does not confer jurisdiction or power on the Federal Court.

In reply, Mr Cecil Abraham submitted that in the instant case, the judgment was not given in accordance with the law, ie under s 78 of the Act and r 63 of the Rules. This court has the inherent power to determine the issue in order to prevent injustice to the respondents.

With respect, I disagree with Dato' Dr Das that this court has no jurisdiction to hear this application. Rule 137 of the Rules clearly gives us the inherent powers to hear any application or to make any order as may be necessary to prevent injustice. The issue of reopening or reviewing our own decision in the instant case therefore does not arise.

Conclusion

For the above reasons, the application of the respondents for an order that the judgment dated 22 December 2000 be set aside, is allowed with costs, because on that date, the court was not duly constituted as there was only one remaining judge of the court. I also order that the application of the appellant set aside the ex parte order dated 4 January 2001, allowing the stay of execution be dismissed with costs. In the result, the appeal shall be reheard by a newly constituted panel of the Federal Court.

Lastly, I have shown this judgment in draft to my learned brothers, Steve Shim CJ (Sabah & Sarawak) and Haidar JCA, who agreed with my reasons and conclusion.

Application to set aside the judgment allowed.

Reported by Zahid Taib

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